

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Willie Mitchell

(Enter above the full name of the Plaintiff in this action)

C O M P L A I N T

- VS -

Civil Action No.

(To be supplied by the Clerk of the Court)

Marcus O. Hicks, Commissioner;
Department of Corrections' Medical
Provider; Dr. John Doe; and
Dr. Jane Doe.

Plaintiff's Complaint

NOV 12 2020

AT 8:00
WILLIAM T. WALSH, CLERK

(Enter above full name of the Defendant(s) in this action)

INSTRUCTIONS – READ CAREFULLY

1. This complaint must be legibly handwritten or typewritten, signed by the Plaintiff and subscribed to under penalty of perjury as being true and correct. All questions must be answered concisely in the proper space on the form. Where more space is needed to answer any questions, attach a separate sheet.
2. In accordance with Rule 8 of the Federal Rules of Civil Procedure, the complaint should contain (a) a short and plain statement of the grounds upon which the court's jurisdiction depends; (b) a short plain statement of the claim showing that you are entitled to relief; and (c) a demand for judgment for the relief which you seek.
3. You must provide the full name of each Defendant or Defendants and where they can be found.
4. You must send the original and one copy of the complaint to the Clerk of the District court. You must also send one additional copy of the complaint for each Defendant to the Clerk. Do not send the complaint directly to the Defendants.
5. Upon receipt of a fee of \$400.00 (as of May 1, 2013), your complaint will be filed. You will be responsible for service of a separate summons and copy of the complaint on each Defendant. See Rule 4, Federal Rules of Civil Procedure.

NOTE: If you cannot prepay the \$350.00 filing fee, you may request permission to proceed *in forma pauperis* in accordance with the procedures set forth below. (If there is more than one Plaintiff, *each Plaintiff* must separately request permission to proceed *in forma pauperis*).

The Prisoner Litigation Reform Act of 1996 ("PLRA"), effective April 26, 1996, has made significant changes to the *in forma pauperis* statute, 28 U.S.C. § 1915. The statute no longer provides for waiver of court filing fees for prisoners who are granted leave to proceed *in forma pauperis*. A prisoner who is granted leave to proceed *in forma pauperis* is not required to pay the filing fees in advance, but the prisoner is obligated to pay the entire filing fee in installment payments regardless of the outcome of the proceeding. This obligation to pay the filing fee continues even if the prisoner is transferred to another prison. Therefore, before submitting this application to the Clerk of the Court, a prisoner should consider carefully whether he or she wishes to go forward with the action.

The PLRA obligates prisoners who are granted *in forma pauperis* status to pay the entire filing fee in the following manner, regardless of the outcome of the litigation. See 28 U.S.C. § 1915(b) (1) and (2). The agency having custody over the prisoner shall deduct from the prisoner's institutional account and forward to the Clerk of the Court (1) an initial partial filing fee equal to 20% of the greater of the average monthly deposits to the prisoner's account or the average monthly balance in the prisoner's account for the six-month period immediately preceding the filing of the complaint; and (2) payments equal to 20% of the preceding month's income credited to the prisoner's institutional account each month the amount in the account exceeds \$10.00, until the \$350.00 filing fee is paid. 28 U.S.C. § 1915(b)(1) and (2). However, a prisoner without assets or any means in which to pay the initial partial filing fee will not be prohibited from bringing a civil action. See 28 U.S.C. § 1915(b)(4)..

6. Each prisoner Plaintiff who desires to proceed *in forma pauperis* must submit the following to the Clerk of the Court:

- a. A completed, signed, and dated application to proceed *in forma pauperis* (attached hereto); and
- b. A certified copy of your prison account statement for the 6-month period immediately preceding submission of this application, listing the account balance and all deposits into the account. A prison account statement must be obtained from the appropriate official of each prison at which you are or were confined during the preceding 6 months.

7. If your application to proceed *in forma pauperis* does not conform to these instructions, you will be notified by letter of the nature of the deficiencies. If these deficiencies are not cured within 120 days of the date of the letter, the complaint will be deemed withdrawn, the Clerk's file will be closed, and no fees will be assessed against you.

8. If you are given permission to proceed *in forma pauperis*, the Clerk will prepare and issue a copy of the Summons for each Defendant. The copies of Summons and the copies of the complaint, which you have submitted, will be forwarded by the Clerk to the United States Marshal, who is responsible for service. The U.S. Marshal has U.S.M.-285 forms you must complete so that the Marshal can locate and serve each Defendant. If the forms are sent to you, you must complete them *in full* and return the forms to the U.S. Marshal.

QUESTIONS TO BE ANSWERED

1. Jurisdiction is asserted pursuant to (CHECK ONE):

42 U.S.C. § 1983 (applies to State prisoners)

Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics,
403 U.S. 388 (1971), and 28 U.S.C. § 1331 (applies to federal prisoners)

If you want to assert jurisdiction under different or additional statutes, list them below:

2. Previously Dismissed Federal Civil Actions or Appeals:

If you are proceeding *in forma pauperis*, list each action or appeal you have brought in federal court while you were incarcerated or detained in any facility, that was dismissed as frivolous or malicious, or for failure to state a claim upon which relief may be granted. Please note that a prisoner who has on three or more prior occasions, while detained in any facility, brought an action or appeal in a federal court that was dismissed as frivolous or malicious, or for failure to state a claim upon which relief may be granted, will be denied *in forma pauperis* status unless that prisoner is under imminent danger or serious physical injury. 28 U.S.C. § 1915(g).

a. Parties to previous lawsuit:

Plaintiff(s): _____

Defendant(s): _____

b. Court and Docket Number: _____

c. Grounds for dismissal: () Frivolous; () Malicious; () Failure to state a claim upon which relief may be granted.

d. Approximate date of filing lawsuit: _____

e. Approximate date of disposition: _____

3. Place of Present Confinement: East Jersey State Prison

4. Parties: (In Item (a) below, place your name in the first blank and place your present address in the second blank. Do the same for additional plaintiffs if any).

a. Name of Plaintiff: Willie Mitchell

Address: 1100 Woodbridge Ave. Lock Bag R
Rahway, N.J. 07065

Inmate Number: # 69357 SBI 980261A

b. First Defendant's Name: Marcus O. Hicks

Official Position: Commissioner of Department of Corrections

Place of Employment: N.J. Department of Corrections

How is this person involved in the case (i.e., what are you alleging that this person did or did not do that violated your constitutional rights)?

This defendant is charged with the executive decisions concerning the operation of all state prison facilities, and oversees the contracted Medical Care Providers operating within the State prisons.

c. Second Defendant's Name: Medical Care Provider (John Doe)

Official Position: Supervisor of Medical Care & Treatment

Place of Employment: Department of Corrections

How is this person involved in the case (i.e., what are you alleging that this person did or did not do that violated your constitutional rights)?

As the contracted medical care provider & supervisor of Medical treatment John Doe is charged with the responsibility of ensuring that a prescribed course of treatment is being carried out, which John Doe has acted deliberately indifferent to Plaintiff's medical treatment.

d. If there are more than two defendants, attach a separate sheet. For each defendant, specify: (1) Name; (2) Official Position; (3) Place of Employment; (4) Involvement in this case.

5. I previously have sought informal or formal relief from the appropriate administrative officials regarding the acts complained of in the Statement of Claims (para. 6 below).

Yes No

If your answer is "Yes," briefly describe the steps taken, including how relief was sought, from whom you sought relief, and the results.

Plaintiff who is a chronic care prisoner has repeatedly complained of discomfort, pain, and continuous problems with his ankle during visits to the medical clinic staff.

If your answer is "No," briefly explain why administrative remedies were not exhausted.

6. Statement of Claims:

State here as briefly as possible the facts of your case. Describe how each defendant violated your rights, giving dates and places. If you do not specify how each defendant violated your rights and the date(s) and place of the violations, your complaint may be dismissed. Include also the names of other persons who are involved, including dates and places. Do not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Use as much space as you need. Attach a separate sheet if necessary.

On 1-29-2017, the Plaintiff injured his ankle during a fall in a cell at South Woods State Prison. A medical provider Kristie Fisher RN called a Dr. Anderson who ordered that "pt rt ankle stabilized and wrapped with ace, ice given and instructions to ice and elevate, not to put weight on rt ankle... pt stable and transported per medical and custody to Ecu." While Scott D. Miller, M.D, reports that "surgery proceeded uneventfully," Dr Scott further states that, "In surgery

(Statement of Claim(s), continued):

the syndesmosis rupture was realized. Both lateral malleolus fracture and the syndesmosis rupture have ~~been~~ treated satisfactorily." Plaintiff who has a learning disability coupled with diagnosed mental health issues is incapable of filing formal grievances, but has verbally complained to medical staff during his chronic care visits to the medical clinic nurses and doctors, about the continued pain and discomfort from his ankle up to this date of September 2020. The Plaintiff claims that the Defendants have acted with a deliberate indifference to fulfilling the "Discharge Instructions," and the prescribed course of treatment and physical therapy; and follow-up treatment, or to address Plaintiff's continued complaints of pain and discomfort up to this date. The negligence of the Defendants' deliberate indifference to Plaintiff's medical rights, and his continued pain and discomfort to his ankle has resulted in irreparable harm from this pattern of neglect.

7. Relief:

State briefly exactly what you want the court to do for you. Make no legal arguments. Cite no cases or statutes.

To enjoin the Defendants to conduct a full medical evaluation of the Plaintiff's ankle, to prescribe the necessary course of treatment, and to ensure that the prescribed treatment is carried out. To appoint a monitor that is detached and neutral to review Plaintiff's medical records to assess the extent of the damage to Plaintiff's ankle resulting from the Defendants' negligence and willful indifference. To appoint counsel to Defendant who suffers from a learning disability and a host of diagnosed mental health issues rendering him incapable of filing, responding, or assisting in the litigation of this matter. To enjoin Defendants from retaliating against the Plaintiff. To order Defendants to compensate Plaintiff after an assessment by a detached doctor attesting to the damage to Plaintiff's ankle as a result of the Defendants' negligence and indifference.

8. Do you request a jury or non-jury? (Check only one)

Jury Trial Non-Jury Trial

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 1st day of September, 20 20.

Willie Mitchell X
(Printed Name of Plaintiff)

Willie Mitchell
(Signature of Plaintiff)

Additional Plaintiff(s):

(Printed Name of Plaintiff #2)

(Signature of Plaintiff #2)

(Printed Name of Plaintiff #3)

(Signature of Plaintiff #3)

NOTE: Each Plaintiff named in the Complaint must sign the Complaint here. Add additional lines if there is more than one Plaintiff. Remember, each Plaintiff must sign the Complaint.